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267 NLRB No. 201

D--1142
Washington, DC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASTRO JANITORIAL SERVICES, INC.

and

Case 5--CA--14878

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 82, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 15 November 1982 and amended on 22 December 1982 by Service Employees International Union, Local 82, AFL--CIO, herein called the Union, and duly served on Astro Janitorial Services, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on 28 December 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint by the time prescribed therein. Thereafter, according to the uncontroverted documents submitted with the instant Motion for

Summary Judgment, a field examiner for Region 5 sent Respondent a certified letter on 25 January 1983 stating that no answer to the complaint had yet been received and that a Motion for Summary Judgment would be filed if an answer was not filed by 1 February 1983. The letter was returned unclaimed.

On 31 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer as required by Section 102.20 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on 5 April 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The

respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer to the complaint was filed within 10 days from the service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." According to the uncontroverted allegations of the Motion for Summary Judgment, Respondent has at all times failed to file an answer to the complaint. Subsequent to the issuance of the complaint on 28 December 1982, a field examiner for Region 5 sent a certified letter, dated 25 January 1983, to Respondent in which he informed Respondent that the Regional Attorney had extended the time for filing an answer to 1 February 1983 and advised Respondent again of the requirement for filing an answer and that the Region would seek summary judgment if no answer were filed. That letter was returned unclaimed and Respondent has not since that time filed an answer. As noted above, Respondent has also failed to file a response to the Notice To Show Cause.

No good cause having been shown for the failure to file a timely answer, in accordance with the rule set forth above, the

allegations of the complaint are deemed admitted and are found to be true. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a Maryland corporation with an office and place of business located in Oxon Hill, Maryland, where it is engaged in providing janitorial services throughout the Washington, D.C., metropolitan area. During the 12 months preceding issuance of the complaint, a representative period, Respondent has purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Maryland.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Service Employees International Union, Local 82, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Unit and Certification

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed at Respondent's 320 First St., N.W., Washington, D.C. worksite as general cleaners, buffers and waxers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

The Union was certified as the collective-bargaining representative of the employees in said unit on 8 October 1982 and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 14 October 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 14 October 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 14 October 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of

the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328

F.2d 600 (5th Cir.), cert. denied 379 U.S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Astro Janitorial Services, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union, Local 82, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed at Respondent's 320 First St., N.W., Washington, D.C., worksite as general cleaners, buffers and waxers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 8 October 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 14 October 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of

all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Astro Janitorial Services, Inc., Oxon Hill, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union, Local 82, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time employees employed at Respondent's 320 First St., N.W., Washington, D.C. worksite as general cleaners, buffers and waxers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Washington, D.C., facility copies of the attached notice marked "'Appendix.'"¹ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

22 September 1983

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union, Local 82, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time employees employed at the Employer's 320 First St., N.W., Washington, D.C. worksite as general cleaners, buffers and waxers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

ASTRO JANITORIAL SERVICES, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Candler Building, 109 Market Place, 4th Floor, Baltimore, Maryland 21202, Telephone 301--962--2838.